

SENATE BILL REPORT

ESHB 1840

As of February 27, 2014

Title: An act relating to firearms laws concerning persons subject to no-contact orders, protection orders, and restraining orders.

Brief Description: Concerning firearms laws for persons subject to no-contact orders, protection orders, and restraining orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet and Tharinger).

Brief History: Passed House: 3/12/13, 61-37; 2/12/14, 97-0.

Committee Activity: Law & Justice: 2/26/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: There are a number of civil protection orders a court may impose to restrict a person's ability to have contact with another person. A court may enter an ex parte temporary protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, permanently. Additionally, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. A court may impose a restraining order in a variety of contexts, but they are commonly entered in family law proceedings to keep the parties from coming into contact with one another or to prevent removal of or injury to a child. Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order.

Unlawful Possession of a Firearm. *State Law.* A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has control of any firearm after being previously convicted of a serious offense. A serious offense includes, among other things, any crime of violence, various class B felonies, any felony with a deadly weapon verdict, and certain vehicular-related crimes when committed while under the influence of alcohol or drugs, or while driving recklessly. Unlawful Possession of a Firearm in the first degree is a class B felony.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony, if the person owns, possesses, or has control of any firearm and the person:

- was previously convicted of any felony other than a serious offense;
- was previously convicted of certain specified gross misdemeanors committed by one family or household member against another;
- was previously involuntarily committed for mental health treatment;
- is under the age of 18, with some exceptions; or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Federal Law. Certain categories of people are disqualified from possessing firearms under federal law, including persons who were convicted of a domestic violence offense and persons subject to certain restraining orders. The order must have been issued after notice and an opportunity for the person to be heard and must restrain the person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner, and include either (1) a finding that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner; or (2) terms restraining the person from committing certain criminal acts against an intimate partner or the child of an intimate partner.

A person subject to a protection order, no-contact order, or restraining order may, under some circumstances, be required to surrender their firearms, dangerous weapons, and concealed pistol license while the order is in place. In entering most orders, if the person to be restrained used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and concealed pistol license, depending on the evidence presented.

Summary of Bill: Additional restrictions on the ability to possess a firearm, dangerous weapon, or concealed pistol license are placed on persons, restraining them from harassing, stalking, threatening, or other conduct that would place a person, intimate partner or child in reasonable fear of bodily injury in violation of protection, no-contact, and restraining orders. The restrictions only apply when the order was issued after notice and an opportunity to be heard. Additionally, the order must include a finding that the restrained person represents a credible threat to the physical safety of the intimate partner or child of the intimate partner or person and, by its terms, explicitly prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child of the intimate partner or person that would reasonably be expected to cause bodily injury. An intimate partner includes a current or former spouse or domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person cohabitated or is cohabitating as part of a dating relationship.

Possession of a firearm while subject to a qualifying protection, no-contact, or restraining order constitutes Unlawful Possession of a Firearm in the second degree. When entering a qualifying order the court must:

- require the respondent to surrender any firearm or other dangerous weapon;

- prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon;
- require the party to surrender their concealed pistol license; and
- prohibit the party from obtaining or possessing a concealed pistol license.

The Administrative Office of the Courts must develop pattern forms for use in documenting a restrained person's compliance with an order to surrender firearms, dangerous weapons, and the person's concealed pistol license. When surrender of these items is ordered, the restrained person must file the appropriate form with the court within five judicial days. All law enforcement agencies must develop policies and procedures regarding acceptance, storage, and return of weapons required to be surrendered.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which the bill is passed, except for section 5 relating to filing of forms documenting compliance with an order, which takes effect December 1, 2014.

Staff Summary of Public Testimony: PRO: This is a rare opportunity to pass a bill that will save lives now. Women are five times more likely to be killed by their partner if there is a firearm. This is specifically designed to conform with the firearm possession protections provided by the Washington State Constitution. Taking away these firearms will help prevent violent crimes. While federal law already prohibits firearm possession in these cases, this bill will provide the needed mechanism to take and store the firearms safely. One-quarter of the abusers who kill their spouses had been served with a protection order before doing so. The most dangerous time for a woman is when she tries to end a relationship. This law is about increasing the safety of people who have gone through the effort to get a court order. This will increase the safety of law enforcement officers responding to calls for protection order violations.

Persons Testifying: PRO: Representative Goodman, prime sponsor; David Martin, King County prosecutor; Don Pierce, Washington Assn. of Sheriffs and Police Chiefs; Stephanie Holton, Grace Huang, Judge Chris Wickham, Jolaine Marr, Courtney Weaver, Rory Graves, Robert Brauer, citizens.